

Attorney Docket No. 9237-10

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Baseman et al.
Application No. 10/573,909
International Filing Date: October 1, 2004
For: *Methods and Compositions for Mycoplasma Pneumoniae Exotoxins*

Confirmation No.: 9089
Examiner: Devi, S.
Group Art Unit: 1645

Date: October 29, 2008

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

This response is submitted in reply to the Office Action mailed September 29, 2008 regarding the above-referenced application. Please consider this application in view of the following remarks.

ELECTION OF CLAIMS

In the Office Action, the Examiner has restricted pending claims 1–7 and 9–32 into the following groups:

Group I. Claims 1, 2, 9 and 10, drawn to an isolated polypeptide comprising an amino acid sequence of SEQ ID NO:2, 3, 4, 5, or 6, or a biologically active fragment thereof;

Group II. Claims 3–5 and 11–13, drawn to an isolated nucleic acid encoding a polypeptide comprising an amino acid sequence of SEQ ID NO:2, 3, 4, 5, or 6, or a biologically active fragment thereof;

Group III. Claims 6, 7, 14 and 15, drawn to an antibody specific to a polypeptide comprising an amino acid sequence of SEQ ID NO:2, 3, 4, 5, or 6, or a biologically active fragment thereof;

Group IV. Claims 16 and 17, drawn to a method of diagnosing *Mycoplasma pneumoniae* infection comprising contacting a sample with the polypeptide or the fragment of invention I;

Group V. Claims 18 and 19, drawn to a method of diagnosing *Mycoplasma pneumoniae*

infection comprising contacting a sample with the antibody of invention III;

Group VI. Claim 20, drawn to a method of diagnosing *Mycoplasma pneumoniae* infection comprising contacting a sample with the nucleic acid of invention II;

Group VII. Claims 22, 23, 28 and 29, drawn to a method of eliciting an immune response comprising administering the polypeptide of invention I;

Group VIII. Claims 24, 25 and 30, drawn to a method of eliciting an immune response comprising administering the nucleic acid of invention II; and

Group IX. Claims 26, 27, 31 and 32, drawn to a method of eliciting an immune response comprising administering the antibody of invention III.

Applicants provisionally elect Group II, claims 3-5 and 11-13, with traverse. Applicants traverse the restriction on the basis that the inventions of all of Groups I-IX do relate to a single general inventive concept under PCT Rule 13.1 and should be examined together.

The Examiner has indicated that the special technical feature linking Groups I-IV appears to be an isolated polypeptide comprising an amino acid sequence of SEQ ID NO:2, 3, 4, 5, or 6, or a biologically active fragment thereof. The Examiner also alleges that such a polypeptide or a biologically active fragment thereof was already disclosed in PCT Publication No. WO 02/079242 (Chiron SPA). The Examiner bases this allegation on the amino acid sequence shown on pages 2-4 of the Sequence Listing of the Chiron publication. However, what is shown on pages 2-4 of the Chiron publication as SEQ ID NO:4 is a 571 amino acid sequence that is not identical to any of the amino acid sequences of SEQ ID NO:2, 3, 4, 5, or 6 of the present invention (see, e.g., amino acid 371, which is isoleucine in SEQ ID NO:4 of the Chiron publication and which is serine in each of SEQ ID NOs:2, 3, 4, 5 and 6 of the present invention). Furthermore, the Chiron publication does not show or describe any fragments of SEQ ID NO:4 on pages 2-4 of the Sequence Listing. Thus, the special technical feature of invention I is defined over the prior art.

In addition, the technical feature of a polypeptide comprising an amino acid sequence of SEQ ID NO:2, 3, 4, 5, or 6 is a unifying feature of all of the claims of all of Groups I-IX, which are all directed to these polypeptides, nucleic acids encoding these polypeptides and antibodies

Attorney Docket No.: 9237-10
Application No.: 10/573,909
International Filing Date: October 1, 2004
Page 3 of 3

specifically reactive with these polypeptides, as well as methods and kits employing these polypeptides, nucleic acids and antibodies. Thus, all of the claims have unity and should all be examined together in the present application.

Furthermore, if the claims of Group II are found to be allowable, applicants request that the Examiner review and examine all method claims (e.g., claims 20, 24, 25 and 30 of Groups V and VIII) that recite the allowable nucleic acids of the claims of Group II, according to the practice of rejoinder as set forth in section 821.04 of the MPEP. In particular, it is stated therein that if a product claim is elected in a restriction and then found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim are to be rejoined.

Applicants respectfully submit that this application is now in condition for substantive examination, which action is requested.

No fee is believed due with this response. However, the Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-0220.

Respectfully submitted,

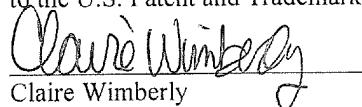


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Claire Wimberly